Filed 5/18/16 P. v. Gomez CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ADIN OVIDIO GOMEZ, Defendant and Appellant.	B262753 (Los Angeles County Super. Ct. No. KA106694)

APPEAL from a judgment of the Superior Court of Los Angeles County, Juan Carlos Dominguez, Judge. Affirmed.

Robert Booher, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Joseph P. Lee and Jaime L. Fuster, Deputy Attorneys General, for Plaintiff and Respondent.

SUMMARY

Defendant and appellant Adin Ovidio Gomez struck his brother, David Gomez, on the back of the neck with a hair clipper. He appeals from a judgment entered after a jury convicted him of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))[1] and found to be true the allegation that appellant personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). He was sentenced to an aggregate term of six years in state prison.

On appeal, appellant contends there was insufficient evidence that David[2] suffered great bodily injury, insufficient evidence to support the assault with a deadly weapon conviction, the trial court erred in failing to modify the instruction on assault with a deadly weapon to remove the reference to inherently dangerous or deadly weapons, and the trial court erred in overruling an objection to the prosecutor's alleged misstatement of the law on self-defense. We affirm.

FACTS AND PROCEEDINGS BELOW

I. Prosecution Evidence

Appellant lived with his mother, Ana Gomez, and his younger brothers, William, Richard, and David, the victim in this case. One of appellant's sisters, Sandy, lived with her husband, Jose Sandana, in a house across the street from Ana's. Another of appellant's sisters, Esthercita, and her husband, Luis Rosales, lived in another city.[3]

In April 2014, five months prior to the incident at issue in this case, William "got into it" with appellant because William learned that appellant had fought with their younger brother, Richard. William and appellant were shoving each other when

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[1] Further statutory references are to the Penal Code.

[2] Because many parties share the same last name, we use their first names. We mean no disrespect.

[3] At the time of the trial in January 2015, Esthercita was 28 years old, appellant was 25 years old, William was 19 years old, David was 17 years old, and Richard was 15 years old.

appellant pulled a small switchblade out of his pocket. Their older brother, Johnnie, tackled appellant and William cut his hand in the process of disarming appellant. Appellant pled guilty to misdemeanor assault and was sentenced to probation.

On July 20, 2014, Rosales and Esthercita were visiting and staying at Ana's home. At around 9:00 a.m., Rosales was in the living room with Esthercita when he saw appellant come out of his bedroom and go out the front door. Rosales then heard appellant and David talking loudly and having a "strong" conversation.[4] Esthercita went outside first and was yelling for Rosales to "separate them" and "help." When Rosales got outside "they were not fighting anymore" but Rosales grabbed appellant. Appellant put his hands behind his back and Rosales moved him away from David. Rosales did not see anything in appellant's hands. Appellant told Rosales to release him, saying he was not going to fight David anymore. Rosales saw that appellant, who was shirtless, had scratches on his back and face. Appellant then walked away. Rosales saw David standing hunched over and "just saw a little cut" of one to two inches on the back of David's neck. Rosales said, "it didn't appear to be all bloody." Rosales did not check on David as the ambulance arrived and took him away. Three or four minutes after appellant walked away, the police arrived.

At trial, Rosales stated he did not recall telling the police that day that he saw appellant walk out of the house toward David and punch David in the back of the neck two or three times while holding a black object in his right hand nor did Rosales remember telling the police that he pulled appellant away to stop him.

Deputy Viviana Marez interviewed Rosales at the scene. Deputy Marez testified that Rosales told her that he, Esthercita, David and Richard were outside the house by the front door talking when he saw appellant walk from inside the door toward David, begin to run, and punch David two to three times on the neck and back. David had a black object in his right hand when he punched David. Rosales told Deputy Marez that he pulled appellant away from David and appellant walked away.

[4] Rosales, who testified with a Spanish translator, did not understand the conversation as it was in English.

Esthercita testified that on the morning of July 20, 2014, she was in the living room with Rosales and heard appellant and David outside arguing. When she went outside, she saw they were both fighting and punching each other. Esthercita called for her husband, Rosales, to separate appellant and David and Rosales came, telling them to stop fighting. Appellant then backed up and the two stopped fighting. David was crying and bleeding from his neck and looked like he was going to faint. Appellant stood there and then walked away. Esthercita called out for their mother, Ana, saying "David is bleeding," and Ana, their father and other brothers came. Esthercita described it as "just a fight" and thought appellant was drunk. Esthercita saw scratches and marks on appellant's back, shoulder and face before the fight outside with David.

At trial, Esthercita stated she did not recall telling the police that she, Rosales, David and Richard were standing outside when appellant walked out of the house and stabbed David two times in the neck and back, that appellant was holding something in his right hand with a silver tip, that Rosales had to pull appellant from David, and that she yelled to her mother to call 911.

Deputy Marez testified she interviewed Esthercita at the scene and Esthercita stated that she was outside talking to David, Richard and Rosales when appellant came from inside the house, walked towards David, and began punching David on his neck and back two times with an object with a silver tip. Esthercita told Deputy Marez that she yelled for her mother to call 911 and her husband pulled appellant away.

Richard testified that he was with his father outside on the side of the house when he heard a commotion and saw Esthercita with David, saying David was bleeding. Richard called 911. In the call, Richard told the dispatcher that his brother, David, had been "stabbed and it's serious" and at one point says, "David, David, please David, David wake up please, no David please, wake up please." At trial, Richard for the first time related that there was another argument between appellant and David earlier in the morning before the incident with the hair clipper. Richard heard the two arguing and fighting and Saldana, who is married to Sandy, broke up the fight.

Deputy Marez interviewed Richard at the scene and she testified that Richard told her he was outside talking to Esthercita, David and Rosales when he noticed appellant walk towards David and punch him in the neck and back four to five times. Richard told Deputy Marez that appellant had a black and silver metal object in his hand and that Rosales pulled appellant away while Richard helped David to the floor to await paramedics.

David testified that he and appellant had argued at around 2:00 a.m. on July 20, 2014, at his sister Sandy's house across the street from his parent's home and Saldana had broke it up. At trial, David also related for the first time that at around 6:00 a.m., appellant and David got into an argument in the bathroom at their parent's home and David "rushed" and hit appellant three times, including on the face, and appellant fought back. As he walked out of the bathroom and into the living room, David noticed that the back of his neck hurt and was bleeding. Esthercita, who was in the living room, told David he was bleeding and David started "tripping out." David was getting dizzy and fell but did not lose consciousness. David received five stitches for the injury to his neck. David did not disclose the fight in the bathroom to police because he was on probation and did not want to get in trouble. David did not remember testifying at the preliminary hearing that he had woken up in the morning, gone to the restroom and was walking out the front door when he was hit on the back of the neck by appellant. David also testified that a few days after the incident, he told Sandy that he felt bad and blamed himself for starting the fight and had been afraid to tell the police because he was on probation.

Ana testified that she did not see the fight on July 20, 2014, between appellant and David. From outside someone told her that her children were fighting, David was bleeding, and to call 911; Ana called 911.

Detective Marianne Oliver of the Los Angeles Sheriff's Department was one of the first law enforcement officers to arrive at Ana's house. Detective Oliver described the scene as chaotic and tried to speak to David but he would not identify who had stabbed him. Deputy Marez also described the scene as chaotic and said that David was lying on the floor, yelling in pain.

Detective Oliver interviewed David and Ana at the hospital. David told the detective that "he was walking out the house or by the front door when his brother came from behind and either hit him or punched him twice, or he said stabbed twice. He turned around and saw [his brother] holding an object." David told Detective Oliver that after the stabbing he felt dizzy and fell to the ground and hurt his wrist breaking the fall. When Detective Oliver asked why appellant would be upset and stab him, David said that the prior night appellant was drunk on the street and David tried to drag him back to the house. David did not tell the detective that he had fought with appellant that morning in the bathroom. At the hospital, Detective Oliver saw David's injury when doctors removed his bandage and described it as "deep laceration, possibly two and a half inches long" and about a quarter inch deep.

Deputy Jose Salvidar found a small, battery-operated hair clippers on the street in front of the driveway of Ana's house. While Deputy Salvidar was standing by the hair clippers, Richard walked over to him, saw the hair clippers and "identified the item as being the one used by his brother to assault his other brother" but did not give the names of the brothers.

II. Defense Evidence

Sandy testified that at around 3:00 a.m. on July 20, 2014, Richard knocked on the door of her home, which was across the street from Ana's home, saying that appellant and David were fighting. Sandy saw Richard and Saldana separating David and appellant and pulling David off of appellant. A few days later, Sandy had a conversation with David in which David said he felt bad because it was a mutual fight but he did not say so because he was on probation and scared.

Saldana testified that at about 2:00 or 3:00 a.m. Richard knocked on the door saying that David and appellant were arguing and Saldana could hear them. Both David and appellant appeared to have been drinking. Saldana saw them punching each other and thought David might have been the aggressor. Saldana separated the two of them and David went back inside Ana's house and appellant remained outside.

Appellant testified on his own behalf. As to the April incident, he stated that he was drinking when Richard approached him, insulted him and pushed him. Appellant pushed Richard away and his palm made contact with Richard's face. William and Johnnie came home and approached appellant in a "violent and aggressive manner." Appellant thought they were going to attack him so he pulled out a knife to scare them away. Even though he acted in self-defense, he pled guilty to the misdemeanor because jail was horrible.

On July 19, 2014, appellant was outside Saldana and Sandy's house and had been drinking with friends, when David and Richard approached. David was intoxicated and asked for a beer, but appellant said no. David started cussing at appellant, pushing him and hitting him so that appellant fell and David was on top beating him up. Richard left to get help. Appellant was too drunk to fight back. Saldana came out and pulled David off of appellant. Appellant went home while David remained outside cussing and wanting to continue the fight. Appellant noticed that he had blood in his eye from being hit.

When appellant woke up the next morning, he went to the bathroom and took out the clippers to shave his facial hair. He heard a knock on the door and said he was busy. David kicked open the door and started attacking appellant, hitting and kicking him, including hitting appellant on the forehead where he had a metal plate that had been inserted after a bicycle accident. Appellant's vision blurred and, fearing for his safety and acting instinctively, appellant hit back with the clippers once to the back of David's neck. David told appellant that he was going to get appellant back. David felt his neck and left.

Appellant went outside to throw the clippers away and David hit him again, pushing him and screaming. Esthercita told them to stop and called for Rosales. Appellant then walked away and was soon picked up by police. Appellant told the police that David attacked him and he was defending himself. He did not tell the officers he struck David with the hair clippers. He asked to be taken to the hospital, saying he had a

headache and was treated for a leg injury from where David had kicked him and for scratches and bruises on his body.

III. Rebuttal Evidence

Deputy Shawn Spoonhunter picked up appellant on July 20, 2014, and placed him in the back of his patrol car. After being advised of his right to remain silent and to have an attorney, appellant stated that David attacked him by punching and scratching him and then tackled him to the ground. Appellant stated he defended himself by punching back several times but denied using any object in his hand. Appellant complained of pain and a possible broken nose, so Deputy Spoonhunter took appellant to the hospital for treatment and to be cleared by a doctor.

IV. Conviction and Sentencing

The jury convicted appellant of assault with a deadly weapon (§ 245, subd. (a)(1)) and found to be true the allegation that he personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). He was sentenced to an aggregate term of six years in state prison based on a middle term of three years and an enhancement of three years.

DISCUSSION

On appeal, Gomez makes two insufficiency of the evidence arguments, a claim of instructional error and a claim the trial court erred in overruling appellant's objection to the prosecutor's comments on self-defense. Because we find these claims to be without merit, we affirm.

I. Insufficiency of the Evidence Claims

A. Great Bodily Injury

Gomez asserts that there was insufficient evidence from which the jury could conclude that David suffered "great bodily injury" to support the enhancement.

"The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the

existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]" (*People v. Jones* (1990) 51 Cal.3d 294, 314.) "When undertaking such review, our opinion that the evidence could reasonably be reconciled with a finding of innocence or a lesser degree of crime does not warrant a reversal of the judgment." (*People v. Hill* (1998) 17 Cal.4th 800, 849.) "The federal standard of review is to the same effect: Under principles of federal due process, review for sufficiency of evidence entails not the determination whether the reviewing court itself believes the evidence at trial establishes guilt beyond a reasonable doubt, but, instead, whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Section 12022.7, subdivision (a), imposes a sentence enhancement of three years in prison if the jury finds the defendant personally inflicted "great bodily injury" on any person other than an accomplice in the commission of a felony or attempted felony. The statute defines great bodily injury as "a significant or substantial physical injury." (§ 12022.7, subd. (f).) The jury was instructed that great bodily injury "means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm."

In *People v. Escobar* (1992) 3 Cal.4th 740, the Supreme Court held that the determination of whether there was "great bodily injury" within the meaning of section 12022.7 is not based on any specially defined criteria by which the gravity of the injury must be measured, but on the more general "'significant or substantial physical injury'" test provided in the statute. (*Id.* at pp. 746-747, 750; see *People v. Le* (2006) 137 Cal.App.4th 54, 58-59.) Although there must be "a substantial injury *beyond* that inherent in the offense itself," the statutory test "contains no specific requirement that the

victim suffer 'permanent,' 'prolonged' or 'protracted' disfigurement, impairment, or loss of bodily function." (*People v. Escobar*, *supra*, 3 Cal.4th at pp. 746-747, 750.) The injury "need not be so grave" as to cause the victim permanent, prolonged, or protracted bodily damage. (*People v. Cross* (2008) 45 Cal.4th 58, 64.) The injury cannot, however, be "insignificant, trivial or moderate." (*People v. Armstrong* (1992) 8 Cal.App.4th 1060, 1066; see also *People v. Blake* (2004) 117 Cal.App.4th 543, 556.)

"'It is well settled that the determination of great bodily injury is essentially a question of fact, not of law. "'Whether the harm resulting to the victim . . . constitutes great bodily injury is a question of fact for the jury. [Citation.] If there is sufficient evidence to sustain the jury's finding of great bodily injury, we are bound to accept it, even though the circumstances might reasonably be reconciled with a contrary finding.'"'" (*People v. Mendias* (1993) 17 Cal.App.4th 195, 205.)

We conclude that the evidence is sufficient to support the jury's finding that David suffered great bodily injury. Proof that a victim's bodily injury is "great," namely significant or substantial, is commonly established by evidence of the severity of the victim's physical injury, resulting pain, or the extent of medical care required to treat the injury. (*People v. Cross*, *supra*, 45 Cal.4th at p. 66.) "'"A fine line can divide an injury from being significant or substantial from an injury that does not quite meet the description."' [Citations.] Where to draw that line is for the jury to decide." (*Id.* at p. 64.)

Here, Detective Oliver testified that David suffered a "deep laceration, possibly two and a half inches long" and about a quarter inch deep. The injury required five stitches to close. David testified that he was getting dizzy and fell. Deputy Marez testified that David was yelling in pain. Richard's 911 call told the dispatcher that David had been stabbed and "it's serious." Thus, there was substantial evidence from which the jury could reasonably conclude that his injuries were significant or substantial rather than insignificant, trivial or moderate.

We find no merit to appellant's arguments to the contrary. Preliminarily, we note that to the extent appellant relies on cases holding that the evidence must show that an

injury was prolonged and not transitory, they pre-date *Escobar*, *supra*, 3 Cal.4th at pages 746-747, 750 and *Cross*, *supra*, 45 Cal.4th at page 64 which make clear that there is no requirement that the victim suffer permanent, prolonged or protracted disfigurement, impairment, or loss of bodily function. Moreover, in *People v. Nava* (1989) 207 Cal.App.3d 1490, the trial court erroneously instructed the jury that a bone fracture constituted a significant and substantial physical injury within the meaning of section 12022.7 as a matter of law rather than allowing the jury to decide. (*Id.* at p. 1494.) Thus, that case is inapposite. In *People v. Covino* (1980) 100 Cal.App.3d 660, the issue was whether the victim's injuries supported a finding that the force used by defendant was likely to produce great bodily injury for the assault charge. Finally, we find no merit to appellant's contention that by including "a wound requiring extensive suturing" in the list of serious bodily injuries in section 243, subdivision (f)(4), "the Legislature did not intend serious or great bodily injury to include suturing that was *not* extensive," such as the five stitches David received. This argument ignores that the statute states that serious bodily injury "include[es], but [is] not limited to . . ." the examples listed. (§ 243, subd. (f)(4).)

We conclude that the section 12022.7 great bodily injury sentence enhancement imposed is supported by substantial evidence.

B. Dangerous Or Deadly Weapon

Appellant contends that the evidence was insufficient to prove the assault with a deadly weapon under section 245, subdivision (a)(1), rather than simple assault under section 240.

We apply the substantial evidence standard, examining the evidence in the light most favorable to the judgment, and determining whether the evidence is reasonable, credible, and of solid value so as to allow a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. (*People v. Prince* (2007) 40 Cal.4th 1179, 1251.) The question is not whether we believe that the evidence establishes guilt beyond a reasonable doubt; instead, we review the evidence favorably to the prosecution to determine whether any rational jury could have reached the verdict that it did. (*Jackson v. Virginia* (1979)

443 U.S. 307, 318-319 [99 S.Ct. 2781, 61 L.Ed.2d 560].) "'If this "substantial" evidence is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment will be affirmed.'" (*In re Gustavo M.* (1989) 214 Cal.App.3d 1485, 1497.) We examine the bare legal sufficiency of the evidence, not its weight. (*People v. Moye* (2009) 47 Cal.4th 537, 556.)

Section 245, subdivision (a)(1) punishes "[a]ny person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm."

The California Supreme Court has identified two categories of weapons--the first category is weapons such as guns, dirks and blackjacks which are "dangerous or deadly" to others in the ordinary use for which they are designed or are objects or instruments that by their intrinsic nature are dangerous and deadly; and the second category is "'ordinary razors, pocket-knives, hatpins, canes, hammers, hatchets and other sharp or heavy objects, which are not weapons in the strict sense of the word and are not "dangerous or deadly" to others in the ordinary use for which they are designed'" but may be dangerous and deadly if it may be inferred that the possessor of the object intended to use the object as a weapon. (*People v. Graham* (1969) 71 Cal.2d 303, 327-328; see *People v. Ricardi* (1992) 9 Cal.App.4th 1427, 1433.) A hair clipper is not an inherently dangerous or deadly weapon and falls into this second category.

For an object in this second category such as a hair clipper, "its character as a dangerous or deadly weapon may be established, at least for the purposes of [a particular] occasion," if it "is *capable* of being used in a dangerous or deadly manner, *and* it may be *fairly inferred* from the evidence that its possessor *intended* on a particular occasion to use it as a weapon should the circumstances require." (*People v. Reid* (1982) 133 Cal.App.3d 354, 365, original italics.) The hair clipper was capable of being used in a dangerous or deadly manner because substantial evidence showed that appellant used it to strike or "punch" David about the neck and head multiple times. (See *People v. Hood* (1958) 160 Cal.App.2d 121, 122 [kit of tools, unloaded gun, toy gun or bottle of whiskey

capable of being used as bludgeon weapon].)[5] And, as discussed above, the hair clipper was found by the jury to have caused great bodily injury in this case.

Thus, we find sufficient evidence supported the jury's conviction of appellant for assault with a deadly weapon.

II. Instructional Error Claim

Appellant claims that the trial court erred in not omitting the portion of the instruction on assault with a deadly weapon that refers to "a weapon that is inherently deadly" or not clarifying that a hair clipper is not an inherently deadly weapon.

On appeal, we apply a de novo standard of review for claims of instructional error. (*People v. Manriquez* (2005) 37 Cal.4th 547, 581; *People v. Alvarez* (1996) 14 Cal.4th 155, 217.)

A court errs if it gives a legally correct instruction which is irrelevant, i.e., unsupported by substantial evidence. (*People v. Ponce* (1996) 44 Cal.App.4th 1380, 1386.) An error in giving a legally correct but irrelevant instruction requires reversal only if it is reasonably probable the defendant would have obtained a more favorable verdict absent the error. (*People v. Breverman* (1998) 19 Cal.4th 142, 149, 164-179; *People v. Rowland* (1992) 4 Cal.4th 238, 282.)

There is no dispute that the court's instruction was a correct statement of the law. "A deadly weapon is any object, instrument, or weapon that is inherently deadly or one that is used in such a way that it is capable of causing and likely to cause death or great bodily injury." (CALCRIM No. 875.)

[5] In his brief, appellant points out that the trial court asked prior to trial how it was possible to stab someone with a hair clipper as it causes superficial injuries and observed "unless you hit someone repeatedly over the head, a hair clipper is unlikely to produce death." During the trial, there was testimony that appellant punched David in the back of the neck multiple times with the hair clipper.

Although we question whether failing to omit the first category of the instruction was an error,[6] even assuming it was error to include the inherently deadly weapon category, any error was not prejudicial. Under *People v. Watson* (1956) 46 Cal.2d 818, the verdict must be upheld unless "it appears 'reasonably probable' the defendant would have obtained a more favorable outcome had the error not occurred." (*People v. Breverman, supra*, 19 Cal.4th at p. 178.) We conclude that, here, appellant would not have obtained a more favorable outcome even if the "inherently deadly" language was omitted. Under the second definition, a hair clipper is a deadly weapon if it is "used in such a way that it is capable of causing and likely to cause death or great bodily injury." (CALCRIM No. 875.) And here, the jury found that the hair clipper was in fact used in a way that caused great bodily injury to David.

III. Claim of Prosecutorial Misstatement of Self-Defense

Appellant contends that the prosecutor misstated the law on self-defense during rebuttal argument and the trial court erroneously overruled appellant's objection to the misstatement, violating his due process rights.

To support a self-defense instruction, there must be substantial evidence that the defendant (1) reasonably believed that he was in imminent danger of suffering bodily injury or was in imminent danger of being touched unlawfully; (2) reasonably believed that the immediate use of force was necessary to defend against that danger; and (3) used no more force than was reasonably necessary to defend against that danger. (CALCRIM No. 3470; *People v. Romero* (1999) 69 Cal.App.4th 846, 853.)

Here, appellant argued at closing that self-defense was a reasonable interpretation of the events. During her rebuttal, the prosecutor argued that self-defense did not apply

[6] The Attorney General seems to suggest that it was for the jury to determine whether a hair clipper is an inherently deadly weapon; however, we do not believe there is any reasonable dispute that a hair clipper is not an inherently deadly weapon. Moreover, there does not seem to be a reasonable likelihood that the jury would have misunderstood a hair clipper to be an inherently deadly weapon given that the instruction informs the jury of two categories of deadly weapons—inherently deadly weapons and non-inherently deadly weapons which are nonetheless deadly weapons if they can be "used in a way that is capable of causing and likely to cause death or great bodily injury."

even if jurors believed that there was a mutual fight outside or a prior fight in the bathroom, because "self-defense does not apply moments later" and "you don't have the right to go after someone after the incident." The prosecutor argued that there was no fear of imminent danger to support the use of immediate force, saying the law limits force to reasonable force under the circumstances. Then, the prosecutor stated, "Even if you feel that there was some sort of fight, you are not justified in getting a weapon and stabbing someone in the back of the head unless your life or something is in danger." Appellant's counsel objected, and the trial court overruled the objection, stating "That's part of it." The prosecutor then told the jury, "You will have the law, and you can read it yourself." The prosecutor argued that appellant waited until David walked away and "he came up from behind."

On appeal, appellant argues that the prosecutor misstated the law on self-defense in two ways: she "incorrectly asserted that one may not use a weapon unless their life is in danger" and "incorrectly asserted that the jury could not consider anything that occurred prior to appellant cutting his brother with the clippers."

Read in context of the rebuttal, these alleged misstatements were not prejudicial. The prosecutor argued several times that there was "no reasonable fear of imminent danger," and that this was the focus and did not suggest that the prior fights were irrelevant to the reasonableness of appellant's fear. Moreover, the prosecutor's imprecise language stating that "you are not justified in getting a weapon and stabbing someone in the back of the head unless your life or something is in danger" did not state only a life-threatening injury would justify the use of force. Rather, the prosecutor's statement left the open-ended "or something" else, the court stated that the prosecutor's statement was only part of the law on self-defense, and after the court ruled on appellant's objection, the prosecutor told the jury that they would have the "law," referring to the jury instructions, to consult.

We conclude that appellant has not shown the claimed errors were prejudicial under either the *Watson* harmless error standard or the *Chapman* harmless error standard.[7]

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.

[7] Under the *Watson* harmless error standard, the trial court's judgment may be overturned only if "it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error." (*People v. Watson*, *supra*, 46 Cal.2d at p. 836.) Under the *Chapman* harmless error standard, "an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt." (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 681; see *Chapman v. California* (1967) 386 U.S. 18, 24.)